

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1969 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
Nos. 1 to 5 No

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HARISINGH MANGALSINGH

Versus

JETHOMAL MINYOMAL

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Appearance:

MR KAVINA FOR MR PM THAKKAR for Petitioner  
NOTICE SERVED for Respondent No. 1

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CORAM : MR.JUSTICE D.C.SRIVASTAVA  
Date of decision: 07/07/98

ORAL JUDGEMENT

This is tenant's revision under section 29 of the Bombay Rent Act under the peculiar facts and circumstances of the case.

The brief facts are that the respondent-landlord filed a suit for eviction against the tenant revisionist vide Rent Suit No.69 of 1972. The said suit was decreed

in terms of compromise arrived at between the parties on 22.8.1973. In the compromise inter alia there was a stipulation that the tenant revisionist shall hand over vacant possession of the accommodation to the landlord respondent by 22.8.1977. The tenant revisionist failed to vacate on the appointed date viz. 22.8.1977. Thereafter, on 28.8.1977 the execution application was moved by the decree holder-respondent. It seems as a counter blast, the revisionist filed Suit No.361 of 1978 on 26.12.1978 in the Trial Court claiming that he has become tenant of the accommodation in view of novation of contract of tenancy inasmuch as in the rent receipt, the landlord respondent admitted to have received Rs.35/\_ p.m. as rent between this period viz. from the date of compromise decree till the date of the filing of the suit.

The said suit was dismissed by the Trial Court. An appeal was preferred which was also dismissed. The two Courts below found that there was no novation of contract. It is therefore this revision. Notice of revision was served on the respondent but he is absent. None has appeared on his behalf.

I have heard learned Counsel for the revisionist Mr.Kavina and perused the judgments of the two Courts below.

On the facts as stated above I am in agreement with the findings recorded by the two Courts below that there was no novation of contract. It is not a case where compromise decree has been assailed on any ground whatsoever or was assailed in Suit No. 361 of 1978 filed by the revisionist. Plea of novation of contract can hardly be accepted on the facts and circumstances of the case. The tenancy of the revisionist was determined by the landlord through a valid notice and a suit for tenant's eviction was filed by the landlord and the said suit was decreed in terms of the compromise. Four years time was granted to the tenant to vacate the premises. This was nothing but concession granted to the tenant and also the landlord's consent not to execute the decree within this period of four months. If during this period the landlord accepted Rs.35/- p.m. from the revisionist it was not accepted as rent reviving the tenancy. In the rent receipt the word rent was mentioned and written under some misconception or confusion. At the most landlord accepted this amount as mesne profits and not beyond that. By accepting mesne profits during this period of four years or so it cannot be said that the consent decree was waived or got set aside by the

landlord nor it could be said that the notice was waived by the landlord. It was not a fresh contract which came into existence and no prudent man like landlord would enter into such a fresh contract ignoring compromise decree. There is nothing on record to show that fresh rent note was executed by virtue of which the revisionist acquired fresh status of tenant. Consequently the two Courts below were justified in repelling the case of the revisionist regarding novation of contract. Execution was unnecessarily postponed because of this counter blast of the revisionist. Revision is therefore patently without merit and is bound to fail.

Revision is therefore dismissed. Since none appeared for the respondent the revisionist shall bear his cost of this revision.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt